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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/696,735	10/25/2000	Glynis Allicia Walton	KCC-13,406.1	2992

7590 06/27/2002

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EXAMINER

GUARIELLO, JOHN J

ART UNIT

PAPER NUMBER

1771

8

DATE MAILED: 06/27/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	09/696935	Applicant(s)	Walters et al.
Examiner	John Guarniello	Group Art Unit	1771

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication .
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- Responsive to communication(s) filed on _____.
- This action is FINAL.
- Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

Claim(s) 1-60 is/are pending in the application.

Of the above claim(s) _____ is/are withdrawn from consideration.

Claim(s) _____ is/are allowed.

Claim(s) _____ is/are rejected.

Claim(s) _____ is/are objected to.

Claim(s) 1-60 are subject to restriction or election requirement.

Application Papers

- See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- The proposed drawing correction, filed on _____ is approved disapproved.
- The drawing(s) filed on _____ is/are objected to by the Examiner.
- The specification is objected to by the Examiner.
- The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - All
 - Some*
 - None of the CERTIFIED copies of the priority documents have been
 - received.
 - received in Application No. (Series Code/Serial Number) _____.
 - received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

Attachment(s)

- Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- Notice of Reference(s) Cited, PTO-892
- Notice of Draftsperson's Patent Drawing Review, PTO-948
- Interview Summary, PTO-413
- Notice of Informal Patent Application, PTO-152
- Other _____

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DETAILED ACTION

Election/Restriction

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-14, 33-40, drawn to breathable elastic film, classified in class 428, subclass 315.5.
- II. Claims 16-23, drawn to breathable laminate, classified in class 442, subclass 398.
- III. Claims 24-32, drawn to method of making breathable elastic film, classified in class 264, subclass 41+.
- IV. Claims 41-61, drawn to personal care absorbent article, classified in class 604, subclass 385.

2. The inventions are distinct, each from the other because of the following reasons: Inventions I and II are related as mutually exclusive species in an intermediate-final product relationship. Distinctness is proven for claims in

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this relationship if the intermediate product is useful to make other than the final product (MPEP § 806.04(b), 3rd paragraph), and the species are patentably distinct (MPEP § 806.04(h)). In the instant case, the intermediate product is deemed to be useful as cover sheet or backsheet of a diaper and the inventions are deemed patentably distinct since there is nothing on this record to show them to be obvious variants. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions anticipated by the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

3. Inventions I, II and IV are related as mutually exclusive species in an intermediate-final product relationship. Distinctness is proven for claims in this relationship if the intermediate product is useful to make other than the final product (MPEP § 806.04(b), 3rd paragraph), and the species are

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patentably distinct (MPEP § 806.04(h)). In the instant case, the intermediate product is deemed to be useful as absorbent sponges and the inventions are deemed patentably distinct since there is nothing on this record to show them to be obvious variants. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions anticipated by the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

4. Inventions I, II, IV and III are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product as claimed can be made by a materially different process such

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as blending a high performance elastomer with a low performance elastomer without the micropores.

5. Because these inventions are distinct for the reasons given above and

have acquired a separate status in the art as shown by their different

classification, restriction for examination purposes as indicated is proper.

6. Because these inventions are distinct for the reasons given above and

have acquired a separate status in the art because of their recognized divergent

subject matter, restriction for examination purposes as indicated is proper.

7. Applicant is advised that the reply to this requirement to be complete

must include an election of the invention to be examined even though the

requirement be traversed (37 CFR 1.143).

8. Applicant is reminded that upon the cancellation of claims to a

non-elected invention, the inventorship must be amended in compliance

with 37 CFR 1.48(b) if one or more of the currently named inventors is no

longer an inventor of at least one claim remaining in the application. Any

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amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John J. Guarriello whose telephone number is 703-308-3209. The examiner can normally be reached on Monday to Friday from 8 am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris, can be reached on (703) 308-2414. The fax phone number for the organization where this application or proceeding is assigned is 703-305-5408.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

John J. Guarriello: gj

Patent Examiner

June 19, 2002


TERREL MORRIS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700